

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5455 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

AMBALAL S PATEL

Versus

SATLAJ COOPERATIVE HOUSING SOCIETY LTD

Appearance:

MR SR SHAH for Petitioner

MR HARIN P RAVAL for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 20/04/2000

ORAL JUDGEMENT

I have heard Mr. Narendra Ramnani learned
counsel for Mr. S.R.Shah, learned Counsel appearing on
behalf of petitioner and Mr.A.B.Mithani, learned counsel
for Mr. Harin Raval, learned counsel appearing on behalf
of respondent nos.1 and 2.

After hearing learned counsel of both the parties at length, I have come to a tentative view that in the present case, the question of membership of the petitioner no.1 in Satlaj Co-operative Housing Society Limited is required to be decided and unless that question is decided, the other questions raised in the petition before the learned Nominee or the Tribunal cannot be decided effectively. Learned counsel of both the parties also agreed to this and they submitted that the matter may be sent back to the Tribunal with a direction to send back the case to the Nominee for deciding the questions raised by the petitioner before the Nominee including the question whether the petitioner is a member of Satlaj Co-operative Housing Society Limited or not. Accordingly the Nominee shall decide all the questions including the question as aforesaid regarding membership of the petitioner.

In view of the above submission of learned counsel of both the parties, the judgment and order dt. 30th June, 1989 passed by the Tribunal in Appeal No.149 of 1989 Annexure: E is hereby quashed. Matter is sent back to the Tribunal and the Tribunal is directed to send back the case to the Nominee to decide the questions raised by the petitioner before him including the question whether the petitioner is a member of the respondent no.1 society or not. The Nominee shall give notice to all the parties and allow an opportunity to the parties to produce all the evidence and thereafter decide the matter in accordance with law. Entire process should be decided by the Nominee within a period three months from the date of receipt of the Record and Proceedings from the Tribunal. The case is remanded to the Tribunal with a direction to send back all the Record and Proceedings of Case No.203 of 1985 to the Nominee immediately.

With the above directions and observations, the present writ petition is disposed of. While making aforesaid order, the delay, if any, that has been caused in deciding the matter has also been taken into consideration. In pursuance of the interim order passed by this Court, a flat alleged to have been originally allotted to the petitioner is still vacant, and therefore, it is necessary to decide the matter early. Accordingly the Nominee is directed to complete the inquiry within the period as stipulated aforesaid. Learned counsel for the respondent, however, submitted that he has no instruction whether the flat alleged to have been allotted to the petitioner is still vacant.

However that will have no effect on the merits of the case because even if it is allotted to the petitioner and if it is found that the petitioner is entitled to get the possession of the flat, then he will be handed over the possession thereof in accordance with the law by the authority, and therefore, till final disposal of the matter, interim order granted by this court shall continue.

Date: 20/4/2000.

(P.K.SARKAR, J.)

ccshah